

REMARKS

Status of Claims

Claims 1-7 were original in the application. Claim 3 has been withdrawn and claim 5 has been cancelled. Claims 1, 6, and 7 have been currently amended. Claims 1, 2, 4, 6, 7 are submitted for examination on the merits.

Objection to the Specification

The specification has been amended per the Examiner's request, namely paragraph [0034] now reads as "4 and 16."

Rejection Pursuant to 35 USC 112, First Paragraph

In the latest Office Action, the Examiner contended that claim 1 fails to comply with the enablement requirement. Specifically, claim 1 states "at least one support element" however the specification describes a container capable of working with three support elements.

Claim 1 has been amended therefore to be consistent with the specification and all references to "one support element" have been replaced with "three support elements."

Rejection Pursuant to 35 USC 112, Second Paragraph

Also in the latest Office Action, the Examiner contended that claim 6 was indefinite, namely that there was insufficient antecedent basis for the limitation

"produced part."

Claim 6 has therefore been amended accordingly.

Rejection Pursuant to 35 USC 103

In the latest Office Action the Examiner rejected claims 1, 2, and 4-7 as being unpatentable over U.S. Patent 6,612,451 ("Tobias") in view of U.S. Patent 5,000,314 ("Fuller").

With respect to claim 1, the Examiner contended as follows. Tobias teaches a container (in annotated Fig. 6) for containing foodstuff. The container comprises a bottom (in annotated Fig. 6); a peripheral wall (in annotated Fig. 6), integral with the bottom and extends upward from the bottom and defines a mouth opening (in annotated Fig. 6). There is at least one support element (in annotated Fig. 6) arranged on the bottom at a position corresponding to the edge of the mouth opening, such that in a stacked position of at least two identical containers, the support element of the first container rests on the edge of the mouth opening of the second container (it is inherent that the lid rests on the edge of the mouth opening and the second container rests on the lid and the edge of the mouth opening in Tobias Fig. 5 at 56) and at least three support elements (in the above annotated Fig. 6) in the form of a bulge are formed in the bottom and side wall and protrude beyond the bottom plane. The Tobias reference DIFFERS in that it does not teach a foil layer in between the mouth and the lid that is on the edge of the mouth of the container. Attention however is directed to Fuller which discloses another stackable container. The stackable container has a foil seal (Fuller, Fig. 1 at 20) over the container's mouth and the cap or lid resting on the containers

opening over the foil seal. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Tobias by employing a foil seal over the containers opening, in view of the teachings of Fuller, in order to create a tamper proof seal.

Claim 1 has been amended to include that the container comprises a plurality of vertical flutes defined within the peripheral wall. Basis for the amendment can be found in Fig. 1 which shows a multiplicity of flutes as reference numeral 17 defined at various points within the peripheral wall. Additional basis can be found in paragraph [0028] of the application as filed which states in pertinent part that:

“A number of flutes 17 is arranged between the bulges 4. These flutes 17 provide additional strength to the bottom 2 of the container 1. The flutes 17 may also be helpful with regard to moisture removal and heat transfer.”

Neither Fuller nor Tobias teach or suggest, alone or in combination, a container with vertical structural flutes defined into the peripheral wall of the container. The flutes are an integral part of the container because as seen in Fig. 3, when multiple identical containers are stacked on top of one another, the weight placed upon the most bottom container can become quite significant. The flutes defined in the container help maintain the structural integrity of the containers and thus help ensure that the foil seal protecting any foodstuff within the container remains uncompromised.

Additionally, claim 1 has been amended to state that the peripheral wall that defines a mouth opening of the container comprises a radial support edge. Basis

for the amendment can be found in Figs. 2 and 3 of the application which show the support edge as reference numeral 7 at the top of the peripheral wall and extending outward from it in a radial direction. Additional basis can found in paragraph [0030] of the application as filed which states in pertinent part:

"The support elements 4 of each container rests on the edge 7 of the mouth opening of the container 1 below. In this way the weight of the containers is transferred through the peripheral wall 3 of each container 1 and the cover foils 5 of each container 1 are relieved of any substantial load."

In direct contrast, Tobias does not teach that a support edge is a component of the peripheral wall which defines the mouth opening of the container. Rather Tobias discloses a support ridge 56 defined into the inner portion of the support surfaces 38 which are disposed on the *bottom* of the container 10. As seen in Fig. 5 of Tobias, when two containers 10 are stacked upon each other, the upper surface 60 of the lid 62 of the bottom container 10b nests snugly within the support ridges 56 of the container 10a above it. In Fig. 3 of the current application however, a stack of the current containers is depicted in cross section which shows each support element 4 disposed on the bottom of each container 1 resting on the support edge 7 of the container 1 beneath it. Having the support edge 7 as part of the peripheral wall which defines the mouth opening of the container 1 allows for a more stable configuration that what is taught in Tobias. Tobias discloses extremely narrow support ridges 56 which leave the standing edges 38a hanging out in free space with no support from the

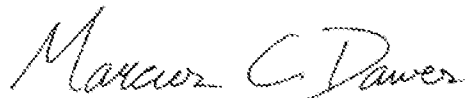
container beneath it. The current invention however, because of the placement of the support edges 7 at the mouth opening rather than at the bottom, ensures that the entirety of the support elements 4 from an upper container are completely supported by the container directly beneath it thus increasing the overall stability of the stacked containers.

Because claim 1 contains at least one feature which is not taught nor suggested by Tobias or Fuller, either alone or in combination, it does not follow that one skilled in the art would be able to take the cited prior art, combine them, and arrive at what is currently claimed. Claim 1 should be allowed for at least these reasons.

With respect to claims 2, 4, 6, and 7, the claims depend upon claim 1 and therefore are allowable on the same grounds presented above, which grounds are herein reinstated.

Applicant respectfully requests advancement of the claims to allowance.

Respectfully submitted,



/Marcus C. Dawes/
Registration No. 61,918
5200 Warner Blvd Ste 106
Huntington Beach, CA 92649
714 8400302
714 8405266 fax